

§ 15c.8

shall use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. USDA may seek the assistance of any involved State agency. If informal resolution efforts are unsuccessful, OASCR shall complete the investigation.

(f) *Final determination.* After a complete investigation, OASCR shall make a final determination as to the merits of the complaint. The complainant shall be notified of the final determination and provided notice of his or her right to file a civil action under the Age Act, 42 U.S.C. 6104(e), and 15c.10 of this part.

(g) *Voluntary compliance.* If OASCR or an agency delegated complaint processing authority finds that age discrimination has occurred, USDA shall attempt to obtain voluntary compliance. The recipient shall take any remedial action which USDA may require to overcome the effects of discrimination. If USDA cannot obtain voluntary compliance, it shall undertake enforcement of the Age Act and this regulation.

§ 15c.8 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Age Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 15c.9 Enforcement.

(a) If USDA finds that a recipient has committed a violation of the Age Act and determines that voluntary compliance cannot be obtained, the Department shall enforce the requirements of the Age Act and this regulation through the termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Age Act or this regulation. The determination of the recipient's violation may be made only after a recipient has

7 CFR Subtitle A (1-15 Edition)

had an opportunity for a hearing on the record before an administrative law judge.

(1) Any termination under this paragraph (a) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Age Act or this regulation.

(2) No action under this paragraph (a) may be taken until:

(i) OASCR, or designee, has advised the recipient of its failure to comply with the Age Act and this regulation, and has determined that voluntary compliance cannot be obtained; and

(ii) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved.

(3) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under this paragraph (a) are initiated.

(b) When an agency withholds funds from a recipient under this regulation, the Agency Head may disburse the withheld funds directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with this regulation and to achieve the goals of the Federal statute authorizing the Federal financial assistance.

(c) USDA may seek to achieve compliance with the Age Act and this regulation by any other means authorized by law.

§ 15c.10 Exhaustion of administrative remedies.

(a) A complainant may file a civil action, in a United States district court for the district in which the recipient is found or transacts business, following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

Office of the Secretary, USDA

Pt. 15c, App. A

(2) The agency issues any finding in favor of the recipient.

(b) Before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the head of the granting USDA agency, and the recipient stating the alleged violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are

demanded in the event the complainant prevails.

(c) No action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint.

APPENDIX A TO 7 CFR PART 15c—AGE DISTINCTIONS IN FEDERAL STATUTES OR REGULATIONS AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Program	Statute	Section and age distinction	Regulation
Farm Service Agency			
Farm Loan Programs.	7 U.S.C. 1941 Persons Eligible For Loans.	Section 761.2 defines "rural youth" as meaning a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.	7 CFR part 761.
Food and Nutrition Service			
Senior Farmer's Market Nutrition Program.	7 U.S.C. 3007 Senior Farmers' Market Nutrition Program.	Section 249.2 defines "senior" as meaning an individual 60 years of age or older, or as defined in § 249.6(a)(1). Section 249.6(a)(1) establishes categorical eligibility for the Senior Farmers' Market Nutrition Program. The categorical eligibility states that: "participants must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits".	7 CFR part 249.
Special Supplemental Nutrition Program for Women, Infants, and Children.	42 U.S.C. 1786	Section 246.2 defines "children" as meaning persons who have had their first birthday but have not yet attained their fifth birthday. Section 246.2 defines "infants" as meaning persons under 1 year of age. Section 246.10(e) establishes category and nutritional needs of the participant for each of the seven food packages available under the program. Food Packages I, II, and IV contain age distinctions. (e)(1) Food Package I—Infants birth through 5 months—(i) Participant category served. This food package is designed for issuance to infant participants from birth through age 5 months who do not have a condition qualifying them to receive Food Package III. (ii) Infant feeding categories—(A) Birth to one month. Three infant feeding options are available during the first month after birth(B) . . . One through 5 months. Three infant feeding options are available from 1 month through 5 months . . . (2) Food Package II—Infants 6 through 11 months—(i) Participant category served. This food package is designed for issuance to infant participants from 6 through 11 months of age . . . (4) Food Package IV—Children 1 through 4 years—(i) Participant category served. This food package is designed for issuance to participants 1 through 4 years of age.	7 CFR part 246.